

LAW ENFORCEMENT TECHNOLOGY ADVERTISEMENT
CLARIFICATION ACT OF 1997

JUNE 26, 1997.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 1840]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1840) to provide a law enforcement exception to the prohibition on the advertising of certain electronic devices, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1840, the “Law Enforcement Technology Advertisement Clarification Act of 1997,” provides a narrow exception to the prohibition on advertisement of electronic devices primarily designed for interception. Under § 2512 of title 18, United States Code, it is unlawful to advertise in interstate or foreign commerce “any electronic, mechanical or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of surreptitious interception.” Unfortunately, the broad restriction against advertisements also applies to advertisements sent to legitimate law enforcement users.

H.R. 1840 creates an exception to § 2512, to permit the advertisement of devices designed for surreptitious interception to an agency of the United States, a State, or a political subdivision thereof which is duly authorized to use such devices. This bill will allow companies which manufacture electronic devices to mail information about their equipment to law enforcement agencies.

BACKGROUND AND NEED FOR THE LEGISLATION

Section 2512 of title 18, United States Code, prohibits the advertisement of any electronic, mechanical or other device, "primarily useful for the purpose of surreptitious interception of wire, oral or electronic communications." This section was drafted with the intention of "significantly curtailing the supply of devices * * * whose principal use is likely to be for wiretapping or eavesdropping."¹ The Committee report listed several examples of devices which would fall under this prohibition, including microphones designed as wristwatches, cuff links, tie clips, fountain pens or cigarette packs.²

Unfortunately, legitimate law enforcement users were swept along with this prohibition on advertisements. Because of the restriction under § 2512, companies which manufacture devices designed for wiretapping are not permitted to advertise the sale of their products to police departments. These companies are aware of cases in which a defendant was charged and convicted for violation of § 2512, and although they would like to make the law enforcement community aware of their products, they do not wish to risk criminal sanctions.³

Law enforcement officers, particularly undercover officers, often use devices which would fall under the definition of a device "primarily designed for surreptitious interception." It is a strange anomaly in the law that police departments have the authority to use electronic intercepts, but they may not receive mailings about improvements to such equipment. This exception is particularly significant since electronic interception equipment is frequently updated and improved.

As an example, police officers and informants often use body microphones to record criminal activity. Covert devices are critical for the collection of evidence, yet many experienced criminals are aware of traditional attempts to disguise body transmitters. These transmitters have been miniaturized, and can now be disguised in some common facade unfamiliar to criminals. By not allowing companies which manufacture intercept equipment to advertise to police departments, police officers' lives are unnecessarily put at risk.

H.R. 1840 will provide relief to companies which manufacture electronic interception equipment, by allowing them to advertise the availability of their products to agencies of the United States, States, or political subdivisions, so long as the recipient of the mailing is duly authorized to use such devices. The Committee appreciates the extensive input of the Federal Bureau of Investigation in drafting this legislation, to ensure that the bill was crafted as narrowly as possible while still achieving the intended effect.

HEARINGS

No hearings were held on H.R. 1840.

¹ S. Rep. No. 1097, 90th Cong., 2d Sess. 94-95 (1968).

² Id.

³ See, e.g., *United States v. Ron Wynn*, 633 F. Supp. 595 (1986).

COMMITTEE CONSIDERATION

On June 12, 1997, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 1840, without amendment by voice vote, a quorum being present. On June 18, 1997, the Committee met in open session and ordered reported favorably the bill H.R. 1840 without amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1840, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 23, 1997.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1840, the Law Enforcement Technology Advertisement Clarification Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

H.R. 1840—Law Enforcement Technology Advertisement Clarification Act of 1997

Current law prohibits the advertisement of certain electronic intercepting devices. H.R. 1840 would permit such advertisements if they are sent to a domestic provider of electronic or wire communication service or to a government agency authorized to use the intercepting device.

CBO estimates that enacting this legislation would have no significant impact on the federal budget. H.R. 1840 would not affect direct spending or receipts; therefore, pay-as-you-go procedures do not apply. This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Peter H. Fontaine for Paul N. Van de Water, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section states that the short title of this bill is the “Law Enforcement Technology Advertisement Clarification Act of 1997.”

SEC. 2. EXCEPTION TO PROHIBITION ON ADVERTISING CERTAIN DEVICES

This section amends § 2512 of title 18, United States Code, to clarify that it shall not be unlawful to advertise for sale any device primarily designed for surreptitious interception, provided the device is mailed, carried or sent in interstate or foreign commerce to a domestic provider of wire or electronic communication service, or to an agency of the United States, a State, or a political subdivision thereof. Any person or organization receiving such advertisements must be duly authorized to use such electronic devices.

AGENCY VIEWS

No agency views were received on H.R. 1840.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SECTION 2512 OF TITLE 18, UNITED STATES CODE

§ 2512. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited

(1) * * *

* * * * *

(3) It shall not be unlawful under this section to advertise for sale a device described in subsection (1) of this section if the advertisement is mailed, sent, or carried in interstate or foreign commerce solely to a domestic provider of wire or electronic communication service or to an agency of the United States, a State, or a political subdivision thereof which is duly authorized to use such device.

